

ATTACHMENT 11

SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

9.1 General Terms

9.1.1 Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, shall be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to changes in FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act and other Applicable Laws. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission.

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards and their appropriate retail analogue or performance benchmarks.

9.1.2.1 If facilities are not available at a location where UNEs are desired by CLEC and where Qwest has deployed facilities and the unavailability is because all existing suitable Qwest facilities at that location are already in use serving Customers: 1) Qwest will build facilities which Qwest would be legally obligated to build to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service that are of the same type that exist at the location to provide sufficient capacity to meet CLEC's request for UNEs; (2) CLEC orders for UNEs above DS0 level or for Local Exchange Service quantities above POLR, will be subject to the same terms and conditions as orders for equivalent retail services at the same location; 3) If CLEC requests a specific Dedicated Transport optical capacity at a location where Qwest's capacity is limited or at exhaust, Qwest will either light additional fiber or modify existing electronics to provide additional capacity under the same terms and conditions it would construct similar facilities for its own retail Customers. CLEC will be responsible for any construction charges for which a retail Customer would be responsible. In other situations, Qwest will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLEC's request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Qwest's POLR and ETC obligations, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service only. These requests will be provisioned using facilities of the same type that already exist at the location to meet CLEC's request for UNEs. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a SUP to change the Due Date to a later date.

9.1.2.1.3.2 For UNEs that do not meet the requirements in Qwest's POLR and ETC obligations, Qwest will send CLEC an indication that there is a lack of available facilities and the order will be delayed. The delayed order will remain open, pending availability of facilities at parity with retail Customer orders. Upon receipt of the delayed order notification, CLEC may submit a request to build UNEs pursuant to the same terms and conditions as ~~orders for equivalent retail services at the same location~~ or alternatively, at CLEC's election, advance payment of a special construction charge and quote preparation fee (QPF) as described in Section 9.19 of this Agreement. In the event that an engineering job is completed that would allow delivery of the UNEs requested, or Qwest ~~completes construction of facilities for delivery of UNEs for CLEC~~ pursuant to a request to build as described in Section 9.19, and this occurs after Qwest sends the delayed order notification, CLEC will receive a new FOC identifying a new Due Date when the UNEs will be available for installation.¹⁹

Deleted: CLEC

¹⁹ In accordance with agreement of the parties, as discussed during oral argument on April 24 and 25, 2002, and presented in a supplemental compliance filing to the Commission dated May 10, 2002.

9.18 Additional Unbundled Elements

CLEC may request non-discriminatory access to and, where appropriate, development of, additional UNEs not covered in this Agreement pursuant to the Bona Fide Request Process.

9.19 Construction Charges

Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section of the equivalent retail service tariff or alternatively at CLEC's election through an advance payment of a *Special Construction price quote*. Qwest will impose these Construction charges only when CLEC requests UNEs outside of Qwest's current service area and Qwest agrees to build, or when CLEC requests UNEs at a location that is served by facilities that are already at full capacity and the request imposes a larger demand than would be expected from a Qwest Retail Customer (i.e. a higher grade of service or a greater volume of loops at a particular location) and Qwest would construct facilities for equivalent retail services under the Special Construction guidelines in the PCAT, or when CLEC elects to request construction in lieu of having an order held for lack of available facilities. Qwest will treat the CLEC's order consistently with how Qwest would treat a Retail Customer order for like facilities at the same location. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest Retail Customer. If Qwest agrees to construct a network element that satisfies the description of a UNE contained in this agreement, that network element shall be deemed a UNE.

9.20 Unbundled Packet Switching

Qwest shall provide CLEC with unbundled Packet Switching in a non-discriminatory manner according to the following terms and conditions.

9.20.1 Description

9.20.1.1 Unbundled Packet Switching provides the functionality of delivering and routing packet data units via a virtual channel to a CLEC Demarcation Point. Unbundled Packet Switching includes use of a distribution Loop and virtual transport facilities as well as the DSLAM functionality with the routing and addressing functions of the Packet Switch necessary to generate the virtual channel.

9.20.2 Terms and Conditions

9.20.2.1 CLEC may obtain unbundled Packet Switching only when all four of the following conditions are satisfied in a specific geographic area:

9.20.2.1.1 Qwest has deployed digital Loop carrier systems, including but not limited to, integrated digital Loop carrier or universal digital Loop carrier

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9.1 General Terms

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9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to network elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and Remote

Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for existing engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a SUP to change the Due Date to a later date.

9.1.2.1.3.2 For UNEs that do not meet the requirements in Section 9.1.2.1, Qwest will send CLEC a rejection notice canceling the LSR or ASR. Upon receipt of the rejection notice, CLEC may submit a request to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds \$100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

9.1.3 Notwithstanding any reference, definition or provision to the contrary, CLEC may provide any Technically Feasible data or voice Telecommunications Services allowed by law over any Loop or Loop portion of a UNE Combination, including without limitation, "voice" services over high frequency portions of any Loop or "data" services over any low frequency portion of any Loop, provided such services do not interfere with "voice band" or "data band" transmission parameters in accordance with FCC rules as more particularly described in this Agreement. Any related equipment provided by CLEC to deliver Telecommunications Services contemplated by this section must comply with appropriate ANSI standards such as T1.417 and T1.413. Other references to the voice or voice band portion of the Loop in this Agreement will mean the low frequency portion of the Loop.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Loop Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other

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9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the Network Element, except when the provisions herein indicate that a Network Element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide service or its Eligible Telecommunications Carrier (ETC) obligation to provide basic Local Exchange Service. Should Qwest have an obligation to build under both POLR and ETC, then Qwest shall build consistent with the greater of its POLR or ETC obligations. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

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9.1.3 Reserved for Future Use.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other Demarcation Point. The ITP is ordered in conjunction with a UNE. The charges for the ITP are contained in Exhibit A. CLEC may order regeneration along with an ITP. The ITP may be ordered per termination. The Demarcation Point shall be:

- (a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation Space; or
- (b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

- (c) if CLEC elects to use an ICDF in association with *Virtual or Physical Collocation*, at the ICDF; or
- (d) if CLEC elects to use a direct connection from its Collocation space to the distribution frame serving a particular element, at the distribution frame; or
- (e) at another Demarcation Point mutually-agreed to by the Parties.

9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Qwest provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this paragraph are contained in Exhibit A to this Agreement.

9.1.6.1. When elements are provisioned by Qwest on an individual element basis (whether or not such elements are combined by CLEC with other elements provided by Qwest or CLEC):

- a) Qwest will perform testing necessary or reasonably requested by CLEC, to determine that such UNE is capable of meeting the technical parameters established for each UNE.
- b) Qwest will repair and maintain such element to ensure that UNE continues to meet the technical parameters established for each UNE. CLEC is responsible for the end-to-end transmission and *circuit functionality testing* for UNE Combinations created by CLEC.
- c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to assist in determining end-to-end *transmission and circuit functionality* of such UNE.

9.1.6.2 When elements are provisioned by Qwest in combination:

- a) Qwest will perform testing necessary or reasonably requested by CLEC to determine that such combination and each UNE included in such combination is capable of meeting the technical parameters of the combination.
- b) Qwest will *repair and maintain such combination* and each UNE included in such combination to ensure that such UNE continues to meet the technical parameters of the combination.

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- a) at CLEC-provided cross-connection equipment located in CLEC's Virtual or Physical Collocation Space; or